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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,600	12/19/2000	Preston J. Hunt	81674-027 3214	4765

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EXAMINER
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ABEL JALIL, NEVEEN

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/741,600

Applicant(s)

HUNT ET AL.

Examiner

Neveen Abel-Jalil

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-8, 31-36, 38-44, 46, 47 and 50-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 31-36, 38 and 51-54 is/are rejected.
- 7) ☒ Claim(s) 44, 46, 47 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16-December -2004 has been entered.
2. The amendment filed on 16-December -2004 has been received and entered. Claims 1, 9-15, 30, 37, 45, and 48-49 have been cancelled. Claims 52-54 have been newly added. Therefore, claims 2-8, 31-36, 38-44, 46, 47 and 50-54 are pending.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-8, 31-36, 38-44, 46-47, and 50-54 are rejected under 35 U.S.C. 103(a) as obvious over Kaufman et al. (U.S. Pub. No. 2001/0032336 A1).

As to claim 51, Kaufman et al. discloses an automatic user preference detection computer system, comprising:

a preference determination module, independent of a user computing device, to create an initial preference profile for a user of a media content distribution source, the preference profile being based on the user's answers to preliminary questions submitted to the automatic user preference detection system and a determination of local media content files stored on the user computing device, wherein the determination of the local media content files stored on the user device determined when the preference determination module scans the user computing device (See page 2, paragraph 0022, wherein "answers to preliminary questions" reads on "user data can be actively collected...includes various attributes", also see page 1, paragraphs 0011-0012, wherein "scanning the user device" reads on "extracting files from memory");

a database, independent of the user computing device, to store the initial preference profile for the user of the media content file distribution source (See page 2, paragraphs 0015-0016); and

a processing module, independent of the user computing device, to select a media content file to distribute to the user based on the initial preference profile (See page 2, paragraphs 0018-0021).

Kaufman et al. discloses the claimed invention except for scans a "disk drive" of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a "disk drive" since it was known in the art that memory resides in a computer "hard drive".

As to claim 52, Kaufman et al. discloses an automatic user preference detection computer system, comprising:

a preference determination module, independent of a user computing device, to determine a preference profile for a user of a media content distribution source, the preference profile being based on previously determined media scores for the user and local media content files determined by scanning the user computing device to determine the local media content files stored on the user computing device (See page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

a database, independent of the user computing device, to store the preference profile for the user of the media content file distribution source (See page 2, paragraphs 0015-0016);

a score calculation module, independent of the user computing device, to determine a score for a media content file distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to a total length of the media content file (See page 1, paragraphs 0009-0011); and

a processing module, independent of the user computing device, to modify the preference profile based on the score to create a new preference profile, wherein the processing module further selects a second media content file to distribute to the user based on the new preference profile (See page 2, paragraphs 0018-0021).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claim 53, Kaufman et al. discloses a method of automatically detecting media content preferences, comprising:

storing a preference profile for a user of a media content file distribution source at the media content file distribution source which is independent of a user computing device, the preference profile being based on previously determined media scores for the user and media content files of the user computing device determined by scanning the user computing device (See page 2, paragraphs 0015-0016, also see page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

determining a score, at a preference processing subsystem independent of the user computing device, for a media content file distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to a total length of the media content file (See figure 2, 975, Limited Device Capture, Rating, shows “Rating” reads on “score”, also see page 1, paragraphs 0009-0011);

modifying the preference profile, at the preference processing subsystem independent of the user computing device, based on the score to create a modified preference profile (See page 2, paragraphs 0018-0020); and

selecting, at the preference processing subsystem independent of the user computing device, a second media content file to distribute to the user based on the modified preference profile (See page 2, paragraphs 0018-0021).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claim 54, Kaufman et al. discloses an article comprising a storage medium having stored thereon instructions that when executed by a machine result in the following:

storing a preference profile for a user of a media content file distribution source at the media content file distribution source which is independent of a user computing device, the preference profile being based on previously determined media scores for the user and media content files of the user computing device determined by scanning the user computing device (See page 2, paragraphs 0015-0016, also see page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

determining a score for a media content file, at a preference processing subsystem independent of the user computing device, distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to

a total length of the media content file (See figure 2, 975, Limited Device Capture, Rating, shows “Rating” reads on “score”, also see page 1, paragraphs 0009-0011);

modifying the preference profile, at the preference processing subsystem independent of the user computing device, based on the score to create a modified preference profile (See page 2, paragraphs 0018-0020); and

selecting a second media content file, at the preference processing subsystem of the user computing device, to distribute to the user based on the modified preference profile (See page 2, paragraphs 0018-0021).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claims 2, 31, and 38, Kaufman et al. as modified discloses wherein the media content file is a music file (See page 2, paragraph 0021).

As to claims 3, 32, and 39, Kaufman et al. as modified discloses wherein a rate at which the processing module modifies the preference profile is configurable (See page 2, paragraphs 0018-0021).



As to claims 4, 33, and 40, Kaufman et al. as modified discloses wherein the preference detection computer system determines the length based on user's responses made with a user control point (See page 1, paragraphs 0009-0011).

As to claims 5, 34, and 41, Kaufman et al. as modified discloses wherein the user control point is a remote control (See page 2, paragraph 0018).

As to claims 6, 35, and 41, Kaufman et al. as modified discloses wherein the media content file is sent to the user via an Internet stream (See page 2, paragraphs 0019-0020).

As to claims 7, 36, and 42, Kaufman et al. as modified discloses wherein the processing module periodically selects testing media content files to distribute to the user, wherein the testing media content files are randomly selected to test whether the user's media content file preferences have changed (See page 2, paragraphs 0021-0022, wherein "randomly" reads on "content is being modified").

As to claims 8, 37, and 43, Kaufman et al. as modified discloses wherein the processing module further modifies the preference profile based on responses of other users having similar media preferences (See page 1, paragraph 0012).

*Allowable Subject Matter*

5. Claims 44, 46, 47, and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for allowance:

The prior art of record (Kaufman et al. -U.S. Pub. No. 2001/0032336 A1-and- Logan et al. -U.S. Patent No. 6,199,076 B1- and- Drosset et al. -U.S. Patent No. 6,662,231 B1) do not disclose, teach, or suggest the claimed limitations of (in combination with all other features in the claim), wherein the score calculation module stops calculating the score for succeeding media content files after a predetermined length of time if the user allows multiple media content files to be played in their entirety by not pressing a media control point, as claimed in dependent claims 44, 46, and 47.

The prior art of record (Kaufman et al. -U.S. Pub. No. 2001/0032336 A1-and- Logan et al. -U.S. Patent No. 6,199,076 B1- and- Drosset et al. -U.S. Patent No. 6,662,231 B1) do not disclose, teach, or suggest the claimed limitations of (in combination with all other features in the claim), wherein the score for the media content file is stored in a temporary storage file and if the user allows multiple media content files to be played, in their entirety, for a predetermined length of time by not pressing a media control point, the score for the media content file is not moved to a permanent storage file, as claimed in dependent claim 50.

***Response to Arguments***

7. Applicant's arguments with respect to claims 2-8, 31-36, 38-44, 46-47, and 50-54 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

***Points of Contact***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on 571-272-4038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil  
February 4, 2005

  
**SAM RIMELL**  
**PRIMARY EXAMINER**